

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DAVID NGUYEN,

Plaintiff,

- against -

FNY HOLDINGS, ET AL.,

Defendants.

21 Civ. 4079 (VM)

DECISION AND ORDER

VICTOR MARRERO, United States District Judge.

On May 6, 2021, Plaintiff David Nguyen ("Nguyen" or "Plaintiff") commenced this action against defendants FNY Holdings, LLC ("Holdings"), FNY GP LLC ("GP"), FNY Capital Management LP, FNY Partners Fund LP, and FNY Managed Accounts LLC (collectively, "FNY" or "Defendants") alleging two counts of breach of contract and seeking declaratory judgments pursuant to Delaware and Federal law. ("Complaint" or "Compl.," Dkt. No. 1.)

On October 4, 2021, Nguyen moved for a judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) ("Rule 12(c)"). ("Motion" or "Mot.," Dkt. No. 24.)¹ FNY opposed the Motion, and cross-moved for a ruling in its favor pursuant to Rule 12(c). ("Cross Motion" or "Cross Mot.," Dkt.

¹ See Kapitalforeningen Lægernes Invest. v. United Techs. Corp., 779 F. App'x 69, 70 (2d Cir. 2019) (affirming the district court ruling deeming an exchange of letters as a motion).

No. 29.) For the reasons stated below, Plaintiff's Motion is DENIED and Defendants' Cross Motion is GRANTED.

I. BACKGROUND

A. FACTS²

Holdings and GP are affiliated investment companies in which Nguyen was a member of and invested in for over two decades. As part of this relationship, FNY maintained a capital account (the "Account") for Nguyen. The Account was governed by certain operating agreements entered into by Nguyen and Holdings (the "Holdings Agreement," Dkt. No. 24-3) and Nguyen and GP (the "GP Agreement," Dkt. No. 24-4, and together with the "Holdings Agreement," the "Agreements"). Effective March 31, 2020, Nguyen withdrew as a member of Holdings and GP.

Following his withdrawal, Nguyen requested a distribution of his Account balance held by FNY pursuant to Section 9.04 of the Holdings Agreement and Section 9.04 of the GP Agreement (the "Distribution Provisions"). These Provisions provide, in pertinent part, that upon a member's withdrawal:

the Company shall Distribute to the Withdrawing Member an amount equal to such Member's Capital

² Except as otherwise noted, the factual background below derives from the Complaint and Defendants' answer to the Complaint (Dkt. No. 22), which the Court construes in favor of the non-moving party. See *infra* Part II. Except where specifically quoted, no further citation will be made to these documents.

Account no later than the one (1) year anniversary of the Withdrawal date . . . in the absence of fraud, willful misconduct, breach of this Agreement or regulatory infraction of the Withdrawing Member.

(GP Agreement § 9.04; Holdings Agreement § 9.04.)

Nguyen maintains that the only dispute between the parties is whether he must provide a release in favor of FNY, which he does not want to do, for Nguyen to receive a distribution in an amount equal to his Account (the "Distribution"). FNY argues that Nguyen is not entitled to the Distribution because his refusal to execute a release is contrary to provisions in the Agreements (the "Release Provisions"), constituting a breach.

The Release Provisions state that when a member withdraws

[a]s of the Termination Date³ of a Terminated Member, such Terminated Member shall execute a release in favor of the Company and its Members, which shall release the Company and its Members from all liabilities to the Terminated Member, in each case except as set forth in a Supplemental Agreement.

(Holdings Agreement § 9.05; GP Agreement § 9.06.) Nguyen contends that the Distribution is not dependent on his compliance with the Release Provisions because the Release Provisions are "covenants and not conditions precedent" to

³ The parties agree that pursuant to the defined terms in the Agreements, a "Terminated Member" includes a withdrawing member, such as Nguyen, and a "Termination Date" includes a withdrawal date.

the Distribution Provisions (Mot. at 3.) Nguyen bases his argument on the lack of conditional phrasing in the Distribution Provisions and that the Distribution Provisions precede the Release Provisions.

FNY counters that it is entitled to judgment on the pleadings because the Agreements are clear that as a withdrawing member, Nguyen was contractually obligated to execute a release in favor of FNY, which he has not done. (Cross Mot. at 3.) Because Nguyen is in breach, FNY argues that pursuant to the plain language of the Distribution Provisions, it is not obligated to pay Nguyen the funds in his Account. (Id. at 2-3.)

II. LEGAL STANDARD

Rule 12(c) permits a party to “move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). “Disposition of a litigation on the pleadings ‘is appropriate where material facts are undisputed and where a judgment on the merits is possible merely by considering the contents of the pleadings.’” Aristocrat Leisure Ltd. v. Deutsche Bank Tr. Co. Ams., No. 04 Civ. 10014, 2005 WL 1950116, at *3 (S.D.N.Y. Aug. 12, 2005) (quoting Sellers v. M.C. Floor Crafters Inc., 842 F.2d 639, 642 (2d Cir. 1988)). The pleadings include “the complaint, the answer, [and] any written documents attached

to them” L-7 Designs, Inc. v. Old Navy, LLC, 647 F.3d 419, 422 (2d Cir. 2011) (quotations omitted).

When a defendant moves pursuant to Rule 12(c), courts address such motions “the same as that for a Rule 12(b)(6) motion to dismiss for failure to state a claim.” Cleveland v. Caplaw Enters., 448 F.3d 518, 521 (2d Cir. 2006). That is, courts accept as true all well-pleaded allegations contained in the complaint and determine whether the complaint states a plausible claim to relief. See Johnson v. Rowley, 569 F.3d 40, 43 (2d Cir. 2009). “When a plaintiff is the movant,” however, “courts must accept all factual allegations in the answer and draw all reasonable inferences in favor of the defendants, who are the non-movants in that scenario.” Lively v. WAFRA Inv. Advisory Grp. Inc., No. 20-2709, 2021 WL 3118943, at *7 (2d Cir. July 23, 2021). “The granting of a motion for judgment on the pleadings is appropriate only if, with all reasonable inferences drawn in favor of the non-moving party, the non-moving party has failed to allege facts that would give rise to a plausible claim or defense.” Prowley v. Hemar Ins. Corp. of Am., No. 05 Civ. 981, 2010 WL 1848222, at *3 (S.D.N.Y. May 7, 2010).

III. DISCUSSION

“Under standard rules of contract interpretation, a court must determine the intent of the parties from the

language of the contract.” Twin City Fire Ins. Co. v. Delaware Racing Ass’n, 840 A.2d 624, 628 (Del. 2003). Pursuant to Delaware law, which governs the Agreements, (see Holdings Agreement § 13.08; GP Agreement § 13.08), if contract language is “clear and unambiguous, the meaning of the contract is a matter of law for the court.” Umbach v. Carrington Investment Partners (US), LP, 851 F.3d 147, 157 (2d Cir. 2017) (collecting Delaware contract cases). Where a court determines that the contract terms are unambiguous, “Delaware courts ‘give effect to the[ir] plain-meaning.’” Id. (quoting Osborn ex rel. Osborn v. Kemp, 991 A.3d 1153, 1159-60 (Del. 2010)). Further, contracts are to be read “as a whole,” with “each provision and term given effect, so as not to render any part of the contract mere surplusage,” id. (quoting Kuhn Constr., Inc. v. Diamond State Port Corp., 990 A.2d 393, 396 (Del. 2010), or “illusory or meaningless.” Id. (quoting Osborn, 991 A.2d at 1159 n.17)).

The plain language of the Provisions belies Nguyen’s assertion that FNY is obligated to distribute the funds in his Account irrespective of whether Nguyen complies with the Release Provisions. The Release Provisions provide that “as of the Termination Date” a terminated member, such as Nguyen, “shall” provide a release. (Holdings Agreement § 9.05; GP Agreement § 9.06.) As Nguyen admits, he has not executed such

a release. (Compl. ¶ 29.) The Distribution Provisions state that FNY is not obligated to distribute funds in a withdrawing member's account if that member is in "breach of this Agreement." (Holdings Agreement § 9.04; GP Agreement § 9.04.) The Court is unpersuaded by Nguyen's argument that his non-compliance with the Release Provisions is somehow not a breach. The parties explicitly agreed that the Distribution could occur later in time (up to one year after a member's withdrawal) than the release (on the date of the withdrawal), so a "breach" in the Distribution Provisions necessarily contemplates a party's compliance with the Release Provisions.

The contract language is clear and unambiguous, and the Court is unpersuaded by Nguyen's arguments to the contrary. If the Court were to adopt Nguyen's argument and view any section that followed the Distribution Provisions without conditional language as mere covenants, numerous terms to which the parties agreed to be bound would be rendered meaningless. Whether a condition precedent exists depends on the parties' intent, 13 Williston on Contracts Section 38:16, and here the language of the Agreements makes clear that the parties intended that Nguyen comply with the Release Provisions to be entitled to the Distribution Provisions.

IV. ORDER

For the reasons stated above, it is hereby

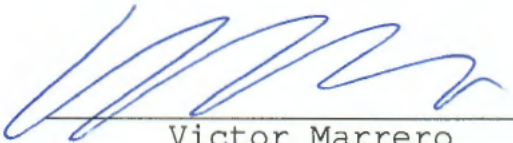
ORDERED that the motion of plaintiff David Nguyen for judgment on the pleadings (Dkt. No. 24) is **DENIED**; and it is further

ORDERED that the motion of defendants FNY Holdings, LLC, FNY GP LLC, FNY Investment Advisers, LLC, FNY Capital Management LP, FNY Partners Fund LP, and FNY Managed Accounts, LLC (Dkt. No. 29) is **GRANTED**.

The Clerk of the Court is respectfully directed to close the case.

SO ORDERED.

Dated: May 25, 2022
New York, New York



Victor Marrero
U.S.D.J.